Exhibit A

Case 1:17-cy-00534-LJV-LGF Document 1-1 Filed 06/14/17 Page 2 of 25

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 05/12/2017

STATE OF NEW YORK

<u>SUPREME COURT: COUNTY OF ERIE</u>

TURF NATION, INC.

3525 Old Dixie Highway, Dalton, GA 30721

SUMMONS Index No.

Plaintiff.

VS.

PLATTE RIVER INSURANCE COMPANY 1600 Aspen Commons Suite 300 Middleton, WI 53562

Defendant.

To the above named Defendant:

YOU ARE HEREBY SUMMONED AND REQUIRED to serve upon the Plaintiff's attorney, at the address stated below, a written Answer to the attached Complaint.

If this Summons is served upon you within the State of New York by personal service you must respond within 20 days after service, not counting the day of service. If this Summons is not personally delivered to you within the State of New York you must respond within 30 days after service is completed, as provided by law.

If you do not respond to the attached Complaint within the applicable time limitation stated above, Judgment will be taken against you, by default, for the relief demanded in the Complaint.

This action is brought in Erie County because of contractual or statutory venue requirements.

DATED:

Buffalo, New York

May 2. 2017

GETMAN & BIRYLA, LLP

Seth L. Hibbert, Esq. 800 Rand Building

14 Lafayette Square

Buffalo, New York 14203-1995

Tel. (716)853-4340

SHibbert@getmanbiryla.com

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NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 05/12/2017

STATE OF NEW YORK

<u>SUPREME COURT: COUNTY OF ERIE</u>

TURF NATION, INC.

3525 Old Dixie Highway, Dalton, GA 30721

COMPLAINT Index No.

Plaintiff.

VS.

PLATTE RIVER INSURANCE COMPANY 1600 Aspen Commons Suite 300 Middleton, WI 53562

Defendant1

Plaintiff, Turf Nation, Inc. ("Turf Nation"), by and through its attorneys, Getman & Biryla LLP and Alston & Bird LLP, as and for its Complaint against Defendant Platte River Insurance Company ("Defendant"), states and alleges as follows:

SUMMARY OF ACTION

1. In this action, Turf Nation, a manufacturer and supplier of artificial sports turf and related products and materials (collectively, "Turf"), seeks to recover \$144,555.59, plus interest and attorneys' fees, from Defendant, the surety on the Performance and Labor and Material Payment Bond number 41328330 dated July 12, 2016 (the "Bond"). Pursuant to a contract between Turf Nation and UBU Sports, Inc. ("UBU"), Turf Nation furnished Turf to a project referred to in the Bond as the "Ralph Wilson Stadium 2016 – Adpro Field House Playing Surface Replacement (the "Project"). Turf Nation has not been paid the \$144,555.59 owed to it by UBU for the Turf supplied by Turf Nation to the Project, and Defendant has failed to pay Turf Nation such amounts despite Turf Nation providing Defendant with timely notice of its claim under the

¹ Between the spring and fall of 2016, Turf Nation shipped significant quantities of Turf to UBU, which Turf UBU installed at various projects located throughout the United States, including the Project which is the subject of the Complaint. As of the filing of this Complaint, UBU owes Turf Nation over \$3 million for Turf supplied by Turf Nation to UBU. The majority of the amounts owed by UBU to Turf Nation are outside the scope of this action. Turf Nation has not named UBU as a defendant in this action to avoid duplicative litigation. Turf Nation has already initiated litigation against UBU in Delaware (Superior Court C.A. No. N17C-01-271 EMD [CCLD]), which action, among other things, seeks to collect from UBU all unpaid amounts owed by UBU to Turf Nation for Turf supplied by Turf Nation to UBU, including the unpaid amounts owed to Turf Nation for Turf supplied to the Project.

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Bond and repeatedly demanding payment from Defendant. Given Defendant's failure to pay Turf Nation the amounts owed to it under the Bond despite the Defendant having no colorable defense to Turf Nation's claim, Turf Nation has been forced to commence this action to collect the amounts rightfully due and owing to it under the Bond.

PARTIES, JURISDICTION AND VENUE

- 2. Plaintiff Turf Nation is a Delaware corporation with its principal place of business located in Dalton, Georgia.
- 3. Defendant Platte River Insurance Company is a Nebraska corporation with its principal office address located, upon information and belief, at 1600 Aspen Commons, Suite 300, Middleton, WI 53562.
- 4. Upon information and belief, at all times relevant to the Complaint, Defendant was and is a foreign corporation authorized to transact business in the State of New York including, but not limited to, the issuance of payment bonds for public improvements.
- 5. Venue is proper in this Court because the Project is located in the County of Erie, New York.
- 6. This Court has jurisdiction over Defendant because, among other reasons, Defendant transacted business and supplied services in New York by executing and issuing the Bond with respect to the Project located in the County of Erie, New York.

FACTUAL BACKGROUND

- 7. Upon information and belief, on or around June 6, 2016, UBU, as general contractor, entered into a construction contract with the County of Erie Department of Public Works to install Turf at the Project, which is located in Orchard Park, New York.
- 8. Upon information and belief, the Project is owned by the County of Erie, New York, and is therefore a public improvement under N.Y. FIN. LAW § 137.
- 9. On or around July 12, 2016, UBU and Defendant executed the Bond, a true and correct copy of which is attached hereto as Exhibit A. Pursuant to the terms of the Bond, material suppliers who are not timely paid for materials supplied to the Project have a direct right of action against Defendant for the amounts owed to such suppliers for materials supplied to the Project. See Exhibit A.
- 10. On or around July 9, 2016, UBU ordered the Turf to be installed by UBU at the Project from Turf Nation via a purchase order dated July 15, 2016, a true and correct copy of which is attached hereto as Exhibit B (the "Purchase Order").

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11. Turf Nation manufactured the Turf ordered by UBU via the Purchase Order and shipped such Turf to UBU on or around July 19, 2016, as evidenced by a bill of lading, a true and correct copy of which is attached hereto as Exhibit C.

- 12. Turf Nation billed UBU \$144,555.49 (the "Amounts Owed") for the Turf furnished by Turf Nation for the Project via an invoice dated July 24, 2016, a true and correct copy of which is attached hereto as Exhibit D (the "Invoice"). The amounts owed to Turf Nation under the Invoice were due by no later than August 24, 2016. See Exhibit D.
- 13. The Purchase Order and Invoice, among other things, represent a valid and enforceable contract between Turf Nation and UBU supported by adequate consideration.
- 14. Upon information and belief, UBU installed all of the Turf furnished by Turf Nation pursuant to the Purchase Order and Invoice at the Project, and such Turf was incorporated into and made part of the Project and the work performed by UBU at the Project.
- 15. Despite repeated demands by Turf Nation to UBU for payment of the amounts owed by UBU to Turf Nation with respect to the Project, Turf Nation has not been paid in whole or in part for the Turf it furnished to the Project.
- 16. On December 27, 2016, Turf Nation provided the Defendant with written notice of its claim for the Amounts Owed under the Bond (the "Bond Claim"). A true and correct copy of the Bond Claim is attached hereto as Exhibit E.
- 17. On February 10, 2017, in response to a request from the Defendant, Turf Nation provided the Defendant with a sworn proof of claim for the Amounts Owed, along with supporting documentation to support such claim.
- 18. On April 7, 2017, Defendant sent Turf Nation a letter which stated that UBU disputed Turf Nation's claim and provided the Defendant with a wire confirmation of a payment from UBU to Turf Nation on or around September 14, 2016.
- 19. On April 19, 2017, Turf Nation responded to Defendant's letter from April 7 (the "April 19 Response"). The April 19 Response explained that Turf Nation did receive a payment from UBU on September 14, 2016, but that the September 14 payment was applied to UBU's earliest outstanding invoices with Turf Nation (which did not correspond to the Project) pursuant to a longstanding agreement between Turf Nation and UBU to apply payments received by Turf Nation from UBU to the oldest outstanding invoices on UBU's account.
- 20. In connection with the April 19 Response, Turf Nation provided the Defendant with email correspondence which showed that Turf Nation confirmed to UBU receipt of the September 14 payment and specified the invoices with respect to which the September 14 payment was applied (UBU's oldest outstanding invoices, none of which corresponded to the Project).

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21. The April 19 Response further demanded that the Defendant pay Turf Nation the Amounts Owed in full by no later than May 3, 2017.

- 22. Despite that (1) Defendant has been on notice of Turf Nation's claim on the Bond since no later than December 2016; and (2) Defendant has articulated no colorable defense whatsoever to Turf Nation's claim, Defendant ignored the April 19 Response and has not paid Turf Nation the Amounts Owed.
- 23. As of the date of the filing of the Complaint, the Amounts Owed are currently due and owing to Turf Nation for the materials sold to UBU by Turf Nation, which materials UBU incorporated into the Project.

CAUSE OF ACTION AGAINST DEFENDANT: ACTION ON BOND

- 24. Turf Nation repeats and realleges the allegations contained in paragraphs 1 through 23 of the Complaint as if fully set forth herein.
- 25. As more particularly described in Exhibit A to this Complaint, on or around July 12, 2016, UBU and Defendant executed the Bond, under which UBU is the Principal, Defendant is the Surety, and the County of Erie, State of New York is the Obligee.
- 26. Under the Bond, Defendant is obligated to pay all amounts owed to material suppliers to the Project who are not timely paid for materials supplied to the Project and incorporated therein, when such material suppliers make a timely claim on the Bond.
- 27. Turf Nation supplied Turf to the Project on or around July 19, 2016 pursuant to a direct contract with UBU, the Principal on the Bond.
- 28. The Turf furnished by Turf Nation for the Project was delivered in the furtherance of UBU's obligation to complete the Project under its contract with the County of Erie, State of New York.
- 29. The Turf furnished by Turf Nation to and for the Project was necessary for the performance of the contract entered into by UBU and the County of Erie, State of New York with respect to the Project, and the same was furnished for said performance of work on the Project and was duly accepted by the County of Erie, State of New York and incorporated by UBU into the Project.
- 30. The amount of \$144,555.49 is currently due and owing to Turf Nation for the Turf furnished by it to the Project.
- 31. Despite due demand upon both UBU and Defendant, Turf Nation has not been paid in whole or in part for the Turf furnished by it to the Project.
- 32. On or around December 27, 2016, Turf Nation filed the Bond Claim with the Defendant. See Exhibit E.

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- 33. As a supplier of Turf which was incorporated into the Project who has made a timely claim on the Bond, Turf Nation is a valid claimant under the Bond.
- 34. This action is timely, and Turf Nation has complied with all conditions under the Bond and N.Y. FIN. LAW § 137 to be granted the relief requested by Turf Nation in this Complaint.
- 35. Despite repeated demand by Turf Nation to both UBU and Defendant, no portion of the Amounts Owed have been paid to Turf Nation.
- 36. Defendant liable to Turf Nation under N.Y. FIN. LAW § 137(c) and N.Y. C.P.L.R. § 5004 for interest on the Amounts Owed at the rate of 9% per annum, which interest accrues from the date Turf Nation filed the Bond Claim, December 27, 2016.
- 37. Further, the Court should award Turf Nation its reasonable attorney's fees incurred in prosecuting this action pursuant to N.Y. FIN. LAW § 137(c) because Defendant has offered no defense to payment of Turf Nation's claim on the Bond which has a substantial basis in law or fact, and Defendant has been on notice of Turf Nation's claim since December 2016.
- 38. By reason of the foregoing, Defendant is obligated to Turf Nation under the Bond in the amount of \$144,555.49, plus interest at the rate of 9% per annum and Turf Nation's reasonable attorneys' fees incurred in prosecuting this action.

REQUEST FOR RELIEF

WHEREFORE, Turf Nation hereby respectfully requests the entry of a final judgment against Defendant and in favor of Turf Nation and an award of damages in favor of Turf Nation in the amount of \$144,555.49, plus interest at the rate of 9% per annum and Turf Nation's reasonable attorneys' fees incurred in prosecuting this action.

[SIGNATURE ON FOLLOWING PAGE]

Filed 06/14/17 Page₁8.0f₂25_{0.806341/2017}

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Buffalo, New York DATED:

May 12.2017

GETMAN & BIRYLA, LLP

Seth L. Hibbert, Esq.

800 Rand Building

14 Lafayette Square Buffalo, New York 14203-1995

Tel. (716)853-4340

SHibbert@getmanbiryla.com

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VERIFICATION

PROVINCE OF ONTARIO COUNTY OF NIAGARA: SS.

I, Sid Nicholls, being duly sworn, depose and say that I am the Chief Executive Officer, Chief Financial Officer and Secretary of Turf Nation, Inc. ("Turf Nation"), and have personal knowledge of the matters set forth in the foregoing Complaint. I have read the foregoing Complaint, and the facts and allegations set forth by Turf Nation therein are true and correct, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe to be true based on my knowledge.

This verification is made by me because Turf Nation is a corporation, and I am its principal. The grounds of my knowledge with respect to the facts and allegations set forth in the Complaint are my knowledge as principal of Turf Nation, investigations which I have made and have caused to be made concerning the subject matter of the Complaint, and information acquired by me from the books and records of Turf Nation and in the ordinary course of Turf Nation's business.

TURF NATION, INC.

By: Sid Nicholls, CEO, CFO, Secretary

Sworn and subscribed before me is // day of May, 2017.

Notary Public

My commission expires:

FILED: ERIE COUNTY CLERK 05/12/2017 02:21 PM Page 10 of 25, 806341/2017

NYSCEF DOC. NO. 2

RECEIVED NYSCEF: 05/12/2017

EXHIBIT A

NYSCEF DOC. NO. 2

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RECEIVED NYSCEF: 05/12/2017

COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS OFFICE OF THE COMMISSIONER

BOND NO. 41328330

PROJECT No. JZ-16-04

PERFORMANCE AND LABOR AND MATERIAL PAYMENT BOND

| KNOW ALL MEN BY THESE PRESENTS, That we, _ | UBU SPORTS, INC. |
|--|--|
| of 3110 Woodcreek Drive, Downers Grove, IL 60515 | (hereinafter called Principal) |
| and the PLATTE RIVER INSURANCE COMPANY | a corporation of the State of NE |
| having its principal office in the City of Middlelon | and authorized to do business in the State of |
| New York (hereinafter called Surety) and held and firmly be | ound unto the County of Erie, State of New York |
| (hereinafter called Obligee), in the amount of Two Hundred | Sixty Four Thousand Three Hundred Thirteen and 00/100 |
| (\$ 264,313.00) Dollars, lawful money of the U | nited States of America, for the payment of which the |
| Principal and the Surety hereby bind themselves, their heirs, | executors, administrators, successors and assigns |
| jointly and severally, firmly by these presents. | |
| WHEREAS, the above bounden Principal has by written agr | reement dated June 6-in 20 16 entered into |
| a contract with the Obligee for \$ 264,313.00 | _which contract and documents included therein by |
| reference made a part hereof (hereinafter called Contract), co | Ralph Wilson Studium 2016 - Adpro Fovering the following project, House Artificial Playing Surface Repla |
| | |

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall:

- Well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said
 Contract during the original term of said Contract and any extensions thereof that may be granted by the
 Obligee, with or without notice to the Surety, and during the life of any guarantee required under the
 Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions
 and agreements of any and all modifications of said Contract that may hereafter be made, with or
 without notice to the Surety.
- 2. Promptly make payment to all persons having a direct contract with the Principal or with a subcontractor of the Principal supplying labor and material in the prosecution of the work provided for in said Contract and any and all modifications of said Contract that may hereinafter be made, notice of which modifications to the Surety being hereby waived; then this obligation shall be void, otherwise to remain in full force and effect.

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COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS OFFICE OF THE COMMISSIONER

PROVIDED, HOWEVER, and this bond is executed and accepted upon the following express conditions.

- 1. That all persons who have supplied labor and material as aforesaid shall have a direct right of action hereunder against the Principal and the Surety subject, however, to the prior right of the Obligee to recover hereunder on account of any loss or damage caused to it by the failure of the Principal to perform the Contract as aforesaid.
- 2. The Surety for value received hereby stipulates and agrees, if requested to do so by the Obligee, to fully perform and complete the work and furnish the materials mentioned and described in said contract pursuant to terms, conditions, and covenants thereof, if for any cause said principal fails or neglects to so fully perform said work; the said Surety further agrees to commence said work of completion twenty (20) days after notice thereof from the Obligee.
- That the Obligee shall notify the Surety by registered letter, addressed and mailed to its Home Office, of any breach of said-Contract within sixty (60) days after such breach shall have come to the knowledge of the Obligee (Owner)
- 4. That the Surety shall not be liable hereunder for any damage or compensation recoverable under any Workmen's Compensation or Employer's Liability Statute.
- 5. That no suit, action or proceedings, for loss or damage caused by a breach of any of the conditions of this bond shall be brought against the Surety by the Obligee after one (1) year from the day of final acceptance of the work by the Owner.
- 6. That no suit, action or proceedings for loss caused by the failure of the Principal to pay all persons supplying labor and material in the prosecution of the work under said Contract shall be brought against the Surety after six (6) months from the day on which final payment of the Contract is made.

| Signed, sealed and dated this 12th day of | July 20 16 | · · · · · |
|---|---|-----------|
| | UBU SPORTS, INC. (Principal) | (seal) |
| PLATTE RIVER INSURANCE COMPANY Derek J. Elston, Attorney-in-Fact | (Principal) | (seal) |
| | Ву | (seal) |
| | President, Vice President, Secretary-Treasurer (Surety) | |

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COUNTY OF ERIE DEPARTMENT OF PUBLIC WORKS OFFICE OF THE COMMISSIONER

| State of New York) | INDIVIDUAL ACKNO | WLEDGEMENT | |
|--|---|--------------------------------|--|
| County of | | | |
| On theday of | , 20, before me pers | onally came | |
| to me known and known to minstrument, and he acknowled | ne to be the individual descr lged to me that he executed | ibed in and who executhe same. | uted the foregoing |
| | | | Notary Public |
| | CORPORATE ACKNO | WLEDGEMENT | |
| State of New York) | | | |
| County of | // | | |
| On the /3 day of July | , 20 <u>/6</u> , before me perso | onally came | |
| to me known who, being by m | a duly cuom did danoca a | nd cay that he reside/s | n) : |
| Dodge . 1//Nois ; that h | | nd say that he reside(s | s) in |
| | 1Bu sports Inc | the corno | oration described in and |
| which executed the above inst | rument; that he knows the s | cal of said corporation | n: that the seal affixed to |
| said instrument is such corpora | ate seal; that it was so affixe | ed by authority of the | board of directors of said |
| corporation, and that he signed | I his name thereto by like at | uthority. | // |
| | | F1/4 | te |
| | | 400 | A STATE OF THE PARTY OF THE PAR |
| | | 1/ < | BRYAN WHARE |
| | CYMPTON A CHENONIA | 10.59 CHO 2 470 2 000 | NOTARY PUBLIC - STATE OF ELLINOIS |
| State of II. | SURETY ACKNOWL | EDGEMENT | MIT COMMISSION EXPERES/08/13/18 |
| County of Cook) | | | |
| On the 12th day of July | 20 16 before me perso | nally came Demk I | Eleton |
| to me known, who, being by m | c duly sworn, did denose a | nd say that he reside(s | c) in Chicago II |
| that he is the | way or oring and deprove a | and buy differ the topicable | of in Cincago, II. |
| Attorney-in-Fact | of platte river insurance | COMPANY, the corpo | ration described in and |
| which executed the above instr | ument; that he knows the se | eal of said corporation | that the seal affixed to |
| said instrument is such corpora | te seal; that it was so affixe | d by authority of the l | board of directors of said |
| corporation, and that he signed | his name thereto by like au | thority. | 4 |
| ¥ | | MI | laft |
| ç | ACCOUNT ARAI | | Noton Public |
| NOTARY | OFFICIAL SEAL A WALTON PUBLIC, STATE OF ILLINOIS MISSION EXPIRES 10/21/2017 | | A Walton Notary Public |
| MT COM | Commence | | |

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PLATTE RIVER INSURANCE COMPANY BALANCE SHEET June 30, 2015

Admitted Assets

| Annual Saice | |
|--|-------------------------|
| Cash and invested assets | |
| Bonds | \$86,309,476 |
| Common stocks | 24,983,320 |
| Cash, cash equivalents and short-term investments | 5,334,528 |
| Total cash and invested assets | 116,627,324 |
| | |
| Investment income due and accrued | 415,079 |
| Uncollected premiums and agents' balances in course of collection | 1,563,470 |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 2,629,982 |
| Current federal and foreign income tax recoverable and interest thereon | 2,916 |
| Net deferred tax asset | 1,059,554 |
| Other admitted assets | 4,172 |
| Total admitted assets | \$122,302,497 |
| Finkilisha and Constant War at the said | |
| Liabilities and Surplus as Regards Policyholders Liabilities: | |
| Losies | |
| | \$24,695,251 |
| Reinsurance payable on paid losses and loss adjustment expenses | 1,112,925 |
| Loss adjustment expenses | 4,676,320 |
| Commissions payable, contingent commissions and other similar charges | 350,858 |
| Other expenses (excluding taxes, licenses and fees) | 94,437 |
| Taxas, licenses and fees (excluding federal and foreign income taxes) | 132,905 |
| Unearned premiums | 15,910,522 |
| Ceded reinsurance premiums payable (net of ceding commissions) | 2,121,830 |
| Amounts withheld or retained by company for account of others | 39,500,743 |
| Payable to parent, subsidiaries and affiliates Other habilities | 48,387 |
| Toul liabilities | 873,368 |
| LOTES HADDINGS | 80,517,546 |
| Surplus as regards policyholders: | |
| Common capital stock | 4,800,000 |
| Gross paid in and contributed surplus | |
| Unassigned funds (surplus) | 30,739,907 6,245,044 |
| Surplus as regards policyholders | 41,784,951 |
| Total liabilities and capital and surplus | |
| e account to the second control control actives active active active actives active act | <u></u> |

I, Stephen J. Sills, CEO and President of Platte River Insurance Company do hereby certify that to the best of my knowledge and bellef, the foregoing is a full and true statutory Statement of Admitted Assets and Liabilities, Capital and Surplus of the Operation at June 30, 2015, prepared in conformity with the accounting practices prescribed by the Insurance Department of the State of Nebraska. IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Corporation at Middleton, Wisconsin.

Stephen J. Sills CEO & President



ECEIVED NYSCEF: 05/12/0017

PLATTE RIVER INSURANCE COMPANY POWER OF ATTORNEY

41328330

KNOW ALL MEN BY THESE PRESENTS, That the PLATTE RIVER INSURANCE COMPANY, 8 corporation of the State of Nebroska, baving its principal offices in the City of Middleton, Wisconsin, does make, constitute and appoint

MARCIA K. CESAFSKY; CHRISTOPHER P. TROHA; LINUA M. NAPOLILLO; ANN MARIE MULLINS; DEREK J. ELSTÖN—

its true and lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf, as surery, and as its act and deed, any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED:\$20,000,000,000

This Power of Attorney is granted and as signed and scaled by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PLATTE RIVER INSURANCE COMPANY at a meeting duly called and held on the 8th day of January, 2002.

"RESOLVED, that the President, and Vice-President, the Secretary or Treasurer, acting individually or otherwise, be and they hereby are granted the power and authorization to appoint by a Power of Anorney for the purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, one or more vice-presidents, assistant secretaries and attorney(s)-in-fact, each appointed to have the powers and duties usual to such offices to the business of the company; the signature of such officers and the seal of the Corporation may be affixed to such power of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking or other writing obligatory in the nature thereof to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any of said officers, at any time."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignce, shall not relieve this surely company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Pact cannot be mudified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Communwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

IN WITNESS WHEREOF, the PLATTE RIVER INSURANCE COMPANY has counsed these presents to be signed by its officer undersigned and its corporate seal to be hereto affixed duly attested, this 8th day of February, 2015,

Gary W Stumper President Surety & Fidelity Operations

STATE OF WISCONSIN 5.5 COUNTY OF DANK

PLATTE RIVER INSURANCE COMPANY

Stephen I. Sills CEO & President

On the 8th day of February, 2015 before me personally came Stephon J. Stills, to me known, who being by me duly sworn, did depose and say: that he resides in the County of New York, State of New York; that he is President of PLATTE RIVER INSURANCE COMPANY, the corporation described herein and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

STATE OF WISCONSIN COUNTY OF DANK

CERTIFICATE

Daniel W. Krueger Notary Public, Dane Co., WI My Commission is Permanent

I, the undersigned, duly elected to the office stated below, now the incumbent in PLATTE RIVER INSURANCE COMPANY, a Nebraska Corporation, authorized to make this certificate, DO HEREBY CERTIPY that the foregoing attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force 12-16

Signed and scaled at the City of Middleton, State of Wisconsin this

Antonio Celii

Secretary

THIS DOCUMENT IS NOT VALID UNLESS PRINTED ON DREEN SHADED BACKGROUND WITH A RED SPRIAL NUMBER IN THE UPPER RIGHT HAND CORNER. IF YOU HAVE ANY QUESTIONS CONCERNING THE AUTHENTICITY OF THIS DOCUMENT CALL, 800-475-4450 PR-POA (Rev 02-3015) Case 1:17-cv-00534-LJV-LGF Document 1-1 Filed 06/14/17 Page 16 of 25 NO. 806341/2017

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 05/12/2017

EXHIBIT B

FILED: ERIE COUNTY CLERK 05/12/2017 02:21 PM 06/14/17 Page 17 of 25. 806341/2017

NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 05/12/2017



3110 Woodcreek Drive Downers Grove, IL 60515

> P: 800-828-8700 F: 888-509-3231

PURCHASE ORDER

PURCHASE ORDER No. | PROJECT REFERENCE

16-640-110-30

Buffalo Bills

INVOICE TO: UBU SPORTS INC.

3110 Woodcreek Drive Downers Grove, IL 60515 P: 630 740-2168 • F: 888 509-3231

| , | .O. DATE 07/09/2016 | 5 | HIP VIA | F.O.B. | TERMS | 07/15/2016 |
|--------|--|---------|-------------------|------------------------|-------------------------|------------------------|
| VENDOR | Turf Nation 3525 Old Dixio Dalton, GA 30 Sid Nicholls | | | OH GHIN | hipping Arranged by UBU | |
| QU | ANTITY | UNIT | DES | SCRIPTION | UNIT COST | TOTAL |
| | 87756 | Sq. Ft. | SM50 FIELD GREE | N/LIMEPer Tufting Inst | ructio \$1.50 | \$ 131,634.00 |
| | 1289 | Sq. Ft. | SM50 White Roll J | | \$ 1.65 | \$ 2,126.85 |
| | 40 | LBS. | Sewing Thread | | \$ 17.20 | \$ 688.00 |
| | 5 | Rolls | 12" Seaming Tape | | \$ 72.60 | \$ 363.00 |
| | 1 | Rolls | 60" Seaming Tape | | \$ 363.00 | \$ 363.00 |
| | 46 | Pails | Helmitin Adhesive | | \$ 60.00 | \$ 2,760.00 |
| | 120 | Rolls | Armour Weld Tape | | \$ 55.00 | \$ 6,600.00 |
| | | | | | | |
| ITI | HORIZED: | | | | TOTAL | \$ 1 44,534.8 5 |

NOTE: This purchase order will be deemed as being accepted by the seller unless rejected in writing within five (5) days of the PO date. No substitution of components or materials used by vendors is permissible without prior written consent of Turf Industry Inc.

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NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 05/12/2017

EXHIBIT C

Filed 06/14/17 Page 19 of 25 806341/2017 Case 1:17-cv-00534-LJV-LGF Document 1-1 272017 02:2 FILED:

NYSSTRAIGHT BIDL OF LADING - SHORT FORM - Shipper Copy

RECEIVED, subject to the classifications and fariffs in effect on the date of issue of this Original Bill of Lading

RECEIVED NEGGEE: 205/12/2017

Date: 7/19/2016

ADDBAC

Carrie:

Page: 1 of 2

the property described below in applicating order, except as noted (contents and contents of packages unknown), marked consignor and described below. Which said carried the word corner being understood throughout this contract as meaning any person or corporation in possession of the property under the contract agrees to carry to de usual place of delivery as said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is notified, as to each carrier of all or any of said property over all or any portion of said route to destination. And as to each party at any line interests of any of said property. This is a ratio of a party of any line in the uniform Domestic Straight Bit of Lagragian Supported by the interests of a party of said property. This is a ratio of a ratiowaler shall be subject to as the terms and conditions of the Uniform Domestic Straight Bit of Lagragian Supported by the population of the dissification or term of the disense and conditions of said bit of lagragian countries supported by the attachment thereof, set forth in the classification or term which governs the transportance of training the set of the support of the suppo shipment, and the said terms and conditions are hereby agreed to by the shipper and appepted for himself and his assigns

TURE NATION 3525 OLD DIXIE HIGHWAY DALTON, GA 30721

UBU SPORTS

2110 WOODCREEK DRIVE DOWNERS GROVE, IL 60515

UBU SPORTS 380 MARINE DRIVE CALHOUN, GA 30701

MARK HILL

580-919-9658 HOLLIE FREEMAN

706-564-8153

CUST. ORDER#:

16-640-110-30

OUR ORDER#:

1605 REV #2

ROUTE:

Special Instructions:

| | | Freight charges are: | applica is to be withous consequent fine to this sh | not to Section 7 of abbs pill of rading in delivered to the ci- fectorise on the ci- tion shall sign the fi- armen shall not ma- soment without pay offer fawful chargi- | If this scipment consigner in consigner in a consig |
|------------------|---|----------------------|--|---|--|
| | | | | (Signature of Cor | isignor) |
| 35 ROLL 1605-A1. | 1605-A2, 1605-A3, 1605-A4, 1605-A5, 1605-A6, 1605 | | 53010 | 100 | |
| | 1605-A10, 1605-A11, 1605-A12, 1605-A13, 1605-A14 | | 30010 | 700 | |
| | , 1605-A17, 1605-A18, 1605-A19, 1605-B1, 1605-C1, | | | | |
| 1605-E1, | 1605-F1, 1605-G1, 1605-G2, 1605-H1, 1605-H2, 160 | 5-I1, 1605-I2 | | | |
| 1605-J1. | 605-K1, 1605-K2, 1605-L1 | | | | |
| 46 PAIL HELMITIN | ADHESIVE NON-HAZARDOUS | | 1242 | 60 | · · · · · · · · · · · · · · · · · · · |
| 5 ROLL 12" SEAM | TAPE | | 60 | 60 | |
| 1 ROLL 60" SEAM | TAPE | | 60 | 60 | |
| 1 CASE SEWING | THREAD #42104 (41.20 LBS) | | 41.2 | 60 | |
| 208 | | | 54653.2 L | .BS | TOTALS |

" If the structural moves between two parts by a carrier by water. The law requires that the bik of lading shall state whether it is "carrier's or shoper's weight."

NOTE: Where the rate is dependent on value, also parts are required to state specifically in writing the spread or declared value of the property.

The agreed of declared value of the property.

PER

* "The fibre boxes used for this shipment conform to the specifications set forth in the box maker's certificate thereon and all other requirements of Uniform Freight Classifications."

. Shipper's import in the if stamp; not a part of bill of lading approved by the intentiate Commerce Commission.

SHIPPER'S CERTIFICATION This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

SHIPPER: TURF NATION

PER:

HEATHER

Shipper Phone # / Fax # / E-mail

706-278-4001

706-278-4002

Received by: UBU SPORTS Hollie Freeman

Carrier/Driver: ADDBAC

Receiving & Carrier Signatures

Date

Case 1:17-cy-00534-LJV-LGF Document 1-1 Filed 06/14/17 Page 20 of 25. 806341/2017 NY SETRAIGHT, BIOL OF LADING . SHORT FORM - Shipper Copy RECEIVED NSTOLEN :2025/12/2017 SECEIVED, subject to the classifications and lands in affect on the date of issue of this Original Bill of Lading Date: 7/19/2016 Page: 2 of 2 ADDBAC Carrier The procestly discreted these, or appeared bood order except all maters is precised and contents of package unknown) marked consigned and destruction and destruction of contents of package unknown; marked consigned and destruction and destruction of the property under the content page of destruction of the units of the content of the content of the property under the content property over all or any portion of and rought of destruction, and as to each page of all or any of and property over all or any of and property districts, but exert pages of the page of the p TURE NATION 3525 OLD DIXIE HIGHWAY DALTON, GA 30721 **UBU SPORTS UBU SPORTS** 2110 WOODCREEK DRIVE 380 MARINE DRIVE DOWNERS GROVE, IL 60515 CALHOUN, GA 30701 MARK HILL 580-919-9658 HOLLIE FREEMAN 706-564-8153 CUST. ORDER#: 16-640-110-30 OUR ORDER#: 1605 REV #2 ROUTE: Special Instructions: Subject to Section 7 of conditions of applicable bill of rating of this suppress is to be delivered to the consignor, without reconse or the consignor, the consignor shall sign the following statement Freight charges are: N/A The carrier shall hol make delivery of mis shipment without payment of freight and all other lawful charges (Signature of Coreugnor) 120 ROLL ARMOR WELD TAPE 240 60

| The shortest recise between two parts by a cancer by water, this two requires that bis bit of taking point state weether it of "cancers or shoppers weight". NOTE: Where me nate despended on visite shippers are required to state secondually in writing the agreed or declared white of the property. PER - The fibre boxes used for this altioners conform to their shippers to be not exceeding. PER - The fibre boxes used for this altioners conform to this specifications set forth in the box mater's pertitional triends, and all other requirements of Uniform Fisight Classifications. - Shipper's imprint in lieu if stamp, not a part of bit of lading approved by the transtate Commission. SHIPPER'S CERTIFICATION This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation. Per | EMÉRÉPICY RESPONSE NUMBER: CONTANT: REGISTERED COMPANY |
|---|--|
| SHIPPER: TURF NATION | Received by: UBU SPORTS Hollie Freeman |
| PER: HEATHER | Carrier/Driver: ADDBAC |
| Shipper Phone # / Fax # / E-mail 706-278-4001 706-278-4002 | |

54653.2 LBS

Receiving & Carrier Signatures

Star Bill of Lading Software - www.starbol.com

TOTALS

Date

208

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NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 05/12/2017

EXHIBIT D

Case 1:17-cv-00534-LJV-LGF Document 1-1 Filed 06/14/17 Page 22 of 25 806341/2017

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 05/12/2017





| INVOICE No. | INVOICE DATE | |
|-------------|--------------|--------|
| 1659-16 | Jul 24, 2016 | 1 OF 1 |

| UBU SPORTS IN | IC | | 0 | PICKED UP BY UBU ON BOL 2027 | |
|---------------|--------------|---------------------------------|----------------------|------------------------------|--------------|
| 3110 WOODCRE | EK DRIVE | | 0. | | |
| DOWNERS GRO | VE, IL 60515 | | T | | |
| 0 | | | (j) | | |
| CUSTOMER | SHIF | PPED VIA | TERMS | SHIPDATE | DUE DATE |
| 16-640-110-30 | PICE | (UP | NET 30 DAYS | Jul 19, 2016 | Aug 24, 2016 |
| QUANTITY | UNIT | | DESCRIPTION | UNIT PRICE | AMOUNT |
| 87,756 | SQFT | SM-50 FIELD G | REEN/LIME GREEN TURF | \$1.50 | \$131,634.00 |
| 1,289 | SQFT | SM-50 WHITE I | ROLL "J" | \$1.65 | \$2,126.85 |
| 41 | LBS | SEWING THREAD ONE CASE 41.2 LBS | | \$17.20 | \$708.64 |
| 5 | ROLLS | 12" SEAMING T | APE | \$72.60 | \$363.00 |
| 1 | ROLL | 60" SEAMING T | APE | \$363.00 | \$363.00 |
| 46 | PAILS | HELMITIN ADH | ESIVE | \$60.00 | \$2,760.00 |
| | | ARMOUR WELD TAPE | | \$55.00 | \$6,600.00 |

MAKE CHECKS PAYABLE TO TURF NATION INC.

REMIT TO: TURF NATION INC.

First Bank of Dalton

PO Box 459, Dalton, Georgia, USA 30722-0459

Attn: Robin Collins

706-226-5377

SUBTOTAL

\$144,555.49

SALES TAX

FREIGHT

TOTAL

\$144,555.49

WIRE TRANSFER INSTRUCTIONS

Wire funds to: First National Bankers Bank Louisiana 7813 Office Park Blvd., Baton Rouge, LA 70805- ABA: #052006495 For Credit to: First Bank of Dalton, Account: #061104877 116 N. Hamilton Street, PO Box 459, Dalton GA 30722-0459 For Further Credit to: TURF NATION INC., Account #150012987

INTERNATIONAL WIRE TRANSFER INSTRUCTIONS

Wire funds to: Suntrust, 2701 East 3rd Street, Chatomongs TN 37404 SWIFT: SNTBUSSA. Routing #061000104 For Credit to: First Bank of Dalton, 18 N. Hamilton Street, Dalton, GA 30726, Account #23622 For Further Credit to: TURF NATION INC., Account #150012987

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NYSCEF DOC. NO. 6

RECEIVED NYSCEF: 05/12/2017

EXHIBIT E

FILED: ERIE COUNTY CLERK 05/12/2017 02:21 PM

NYSCEF DOC. NO. 6

RECEIVED NYSCEF: 05/12/2017



Attorneys and Counselors at Law

Richard J. Biryla Seth L. Hibbert

Joseph S. Montagnota Aaron R. Walkov 800 Rand Building 14 Lafayette Square Buffalo, New York 14203-1995 Tel. No. (716) 853-4340 Fax. (716) 853-4349 www.getmanbityla.com

Peter L. Costa Jack L. Getman (Of Counsel)

Michael K. Bardo Paralegal

Kathleen M. Biryla Office Administrator

December 27, 2016

Via Certified - Return Receipt Requested Mail

County of Erie 95 Franklin Street

Buffalo, New York 14202

Attn: Mark Polancarz, County Executive

UBU Sports, Inc. 3110 Woodcreek Drive

Downers Grove, Illinois 60515

County of Erie 95 Franklin Street Buffalo, New York 14202

Buffalo, New York 14202

Attn: Stefan Mychajliw, Comptroller

County of Erie 95 Franklin Street Buffalo, New York 14202

Attn: John C. Loffredo

Commissioner of Public Works

UBU Sports, Inc.

c/o The Corporation Trust Company

Corporation Trust Center

1209 Orange Street

Wilmington, Delaware 19801

Platte River Insurance Company

c/o CAPSpeciality 1600 Aspen Commons

Suite 300

Middleton, Wisconsin 53562-4719

RE: Project:

Ralph Wilson Stadium ADPRO Field House

Artificial Playing Surface Replacement

Project #:

JZ-16-04

General Contractor:

Owner:

Claimant:

UBU Sports, Inc. County of Erie

Turf Nation, Inc.

Surety: Platte River Insurance Company

Gentlemen:

This office represents Turf Nation, Inc. in connection with certain materials furnished consisting of artificial turf, thread, tape and adhesive, together with all necessary and related parts and accessories, at the public improvement project located at Ralph Wilson Stadium ADPRO Field House Artificial Playing Surface Replacement under project number JZ-16-04.

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GETMAN & BIRYLA, LLP

DOC. NO. 6

Turf Nation, Inc. has a claim related to the aforementioned project against UBU Sports, Inc. The claimant herein supplied said materials from July 19, 2016 to July 19, 2016. The amount due is \$144,555.49, which became due on August 24, 2016 and remains unpaid to date.

May this letter serve as a notice of our client's claim under the Payment Bond associated with this project dated July 12, 2016 in the amount of \$144,555.49, issued by Platte River Insurance Company, as surety.

Kindly accept this letter as a claim and provide the undersigned with the appropriate claim documentation to be executed in connection with this matter. Your prompt attention will be greatly appreciated.

Very Truly Yours,

GETMAN & BIRYLA, LLP

RECEIVED NYSCEF: 05/12/2017

Seth L. Hibbert, Esq.

SLH:kmk